

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

**Caption in Compliance with D.N.J. LBR  
9004-1**

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*Attorneys for Salesforce, Inc.*

In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

**DECLARATION OF KEVIN RAMIREZ IN SUPPORT OF THE  
REQUEST FOR ALLOWANCE AND PAYMENT OF  
ADMINISTRATIVE EXPENSE CLAIM OF SALESFORCE, INC.**

I, Kevin Ramirez, declare as follows:

1. I am the AR Analyst-Write-Offs for Salesforce, Inc. (f/k/a salesforce.com,

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<sup>1</sup> A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases are 650 Liberty Avenue, Union, New Jersey 07083.

inc.) ("**Salesforce**"), and I am authorized to execute this Declaration on behalf of Salesforce. If called to testify, I could and would competently testify to the facts set forth herein based on my personal knowledge of those facts, events and transactions.<sup>2</sup>

2. Salesforce is a Delaware corporation, and, among other activities, it provides on-demand customer relationship management and software application services (collectively, the "**Salesforce Services**") to Salesforce's business customers (individually, a "**Salesforce Customer**" and, collectively, "**Salesforce Customers**").

3. This declaration is filed in support of the *Request for Allowance and Payment of Administrative Expense Claim of Salesforce, Inc.* (the "**Administrative Expense Request**") filed by Salesforce with respect to certain amounts due and owing, but unpaid, with respect to the post-petition Salesforce Services provided by Salesforce to Bed Bath & Beyond Inc. ("**BB&B**") (BB&B and the other above-captioned debtors and debtors-in-possession, collectively, hereinafter referred to as the "**Debtors**").

#### **MAINTENANCE OF BUSINESS RECORDS**

4. In my official capacity, I have personal knowledge of the method by which Salesforce maintains permanent records of its transactions (individually, a "**Transaction**" and, collectively, the "**Transactions**") with its customers and, thereupon, I declare and state that Salesforce maintains permanent records of all Transactions in a computerized accounting system. All amounts due and owing to Salesforce with respect to any Transaction with a Salesforce Customer including, but not limited to, payments related to the Services, taxes, interest owed with respect to any Service or agreement, fees, and other charges (individually, an "**Obligation**" and, collectively, the "**Obligations**") are entered in this accounting system at, or near, the time such Obligations are incurred. Likewise, all payments made by a Salesforce Customer with respect to any Obligation or Transaction, and all other credits and

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<sup>2</sup> Capitalized terms used in this Declaration, but which are not defined herein, shall have the meanings ascribed to them in the Administrative Expense Request filed concurrently herewith unless indicated otherwise.

debits related to any Obligation or Transaction, are entered in this accounting system at, or near, the time such payment is received and/or such credit or debit is made or incurred. Each such entry is made in the regular course of business by employees of Salesforce who process these payments, receipts, credits, and debits. If necessary, Salesforce can print hard copies of all entries.

5. I have personal knowledge of the manner by which Salesforce maintains records of its written contracts, statements of work, schedules and any other documents related to such contracts, and all amendments to any contract, statement of work, schedule, and/or any other document (individually, a “**Salesforce Agreement**” and, collectively, the “**Salesforce Agreements**”) with its Customers. As a regular part of its business, Salesforce maintains permanent records of the Salesforce Agreements and these records are compiled at the time, or near the time, that a Salesforce Agreement is received or processed.

#### **SALESFORCE CONTRACT**

6. I have personally reviewed Salesforce’s records relating to the Debtor, including the Transactions, the Obligations, and the Salesforce Agreements, and I am personally familiar with the Debtors’ account with Salesforce.

7. Prior to the Petition Date, Salesforce and the Debtors entered into those certain Order Forms listed on the Administrative Expense Claim Summary<sup>3</sup> (the “**Order Forms**”), which are governed by that certain *Master Subscription Agreement* (the “**MSA**”) (the MSA and the Order Forms, collectively, constitute the “**Salesforce Contract**”) as identified on Exhibit “A” attached hereto and incorporated by reference herein<sup>4</sup>.

8. Pursuant to the Salesforce Contract: (i) the Debtors ordered certain Salesforce

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<sup>3</sup> The Administrative Expense Claim Summary is attached hereto as Exhibit A and is incorporated by reference here in as if fully set forth.

<sup>4</sup> Due to the confidentiality provisions of the MSA, a copy of the Salesforce Contract and related invoices (the “**Invoices**”) are not attached to this Declaration. However, subject to appropriate non-disclosure protections, a copy of the Salesforce Contract and the Invoices will be made available to the Debtors in connection with the Administrative Expense Request.

Services and became obligated to pay in full the aggregate amounts due pursuant to this contract with respect to such services; (ii) Salesforce became obligated to provide the Salesforce Services to the Debtors; (iii) Salesforce has provided such services to the Debtors; and (iv) the Debtors accepted and utilized the Salesforce Services provided pursuant to the Salesforce Contract.

9. Pursuant to the terms and conditions of the MSA, each Party to the Salesforce Contract is obligated to maintain the confidentiality of all Confidential Information including, without limitation, (i) the Debtor's Data, (ii) Salesforce's Confidential Information (including, without limitation, the Services and Content), (iii) the terms and conditions of MSA and all Order Forms (including pricing), and (iv) business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by a Party. Pursuant to Salesforce's obligation to maintain the confidentiality of the Confidential Information, a copy of the Salesforce Contract is not attached hereto.<sup>5</sup> However, upon request and subject to adequate procedures protecting the Confidential Information from disclosure in violation of the MSA, Salesforce will make available a copy of the Salesforce Contract to the Debtor or other appropriate representative of the Debtor's estate.

#### BANKRUPTCY CASE

10. Based upon information and belief, I am informed that, on April 23, 2023 (the "**Petition Date**"): (A) Bed Bath & Beyond Inc. and the other Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of New Jersey (the "**Court**") and, thereby, commenced their individual cases under chapter 11 (collectively, the "**Bankruptcy Cases**"); and (B) on April 24, 2023, the Court entered its order directing the joint administration of the

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<sup>5</sup> The Capitalized Terms referenced in this paragraph not expressly defined shall have the meaning(s) as set forth in the MSA, respectively.

Bankruptcy Cases (but not substantively consolidated consolidating such cases).<sup>6</sup>

11. Based on information and belief, I am informed that on September 14, 2023, the Debtor filed its *Finding of Fact, Conclusion of Law, and Order, (I) Approving the Disclosure Statement on a Final Basis and (II) Confirming the Second Amended Joint Chapter 11 Plan of Bed Bath & Beyond, Inc. and its Debtor Affiliates* [ECF 2172] (the “**Confirmation Order**”). The Confirmation Order provides that certain executory contracts, including the Salesforce Contract, will be deemed rejected as of the date that the Plan<sup>7</sup> becomes effective (the “**Rejection Date**”).

12. Based on information and belief, I am informed that on September 29, 2023, the Debtor filed its *Notice Of (I) Entry of Order (A) Approving the Disclosure Statement on a Final Basis and (B) Confirming the Second Amended Joint Chapter 11 Plan of Bed Bath & Beyond, Inc. and its Debtor Affiliates And (II) Occurrence of Effective Date* [ECF 2311] (the “**Effective Date Notice**”) providing, among other things, that the Plan became effective on September 29, 2023 (the “**Plan Effective Date**”) and that parties asserting a request for allowance and payment of Administrative Expense Claims arising between the Petition and the Plan Effective Date must file their request with the court on or before fourteen days following the Plan Effective date, i.e. October 13, 2023.

### **THE ADMINISTRATIVE EXPENSE CLAIM**

13. Based upon my review of Salesforce’s books and records pertinent to the Debtors’ account, I declare and state that, from and after Petition Date through the Effective Date, the Debtor knowingly accepted the Salesforce Services provided and that provision of

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<sup>6</sup> See *Order (A) Directing Joint Administration of Chapter 11 Cases And (B) Granting Related Relief* [ECF 75].

<sup>7</sup> See, *Second Amended Joint Chapter 11 Plan of Bed Bath & Beyond Inc. and its Debtor Affiliates* [ECF 2160] (the “**Plan**”).

such services was in the ordinary course of business of the parties.

14. Based upon my review of Salesforce's books and records pertinent to the Debtors' account, I declare and state that, on September 26, 2023, the Debtors communicated to Salesforce via e-mail that they will be using the services through September 30, 2023. Accordingly, on September 28, 2023, Salesforce submitted to the Debtor a pro-rated Invoice No. 25019929B in the amount of \$573,397.15 for services from April 23, 2023 through and including September 30, 2023<sup>8</sup>.

15. Based upon my review of Salesforce's books and records pertinent to the Debtors' account, I declare and state that, from the commencement of the Salesforce Contract through the date of this Declaration, the Debtors have failed to pay all post-petition Fees due and owing pursuant to the Salesforce Contract and, more specifically, an amount of not less than **US \$573,397.15**, (the "**Administrative Expense Claim**")<sup>9</sup> remains due and owing to Salesforce pursuant to the Salesforce Contract for services due from the Petition Date through September 30, 2023.

I declare under penalty of perjury that the foregoing is true and correct. Executed this \_\_\_\_ day of October 2023 at San Francisco, California

DocuSigned by:  
  
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**Kevin Ramirez**

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<sup>8</sup> Due to the confidentiality provisions of the MSA, a copy of the Salesforce Contract and related invoices (the "**Invoices**") are not attached to this Declaration. However, subject to appropriate non-disclosure protections, a copy of the Salesforce Contract and the Invoices will be made available to the Debtors in connection with the Administrative Expense Request.

<sup>9</sup> See, the Administrative Expense Claim Summary which is attached hereto as Exhibit A and is incorporated by reference here in as if fully set forth.

## ADMINISTRATIVE EXPENSE CLAIM SUMMARY

Petition Date: 4/23/23

Plan effective/rejection date: 9/29/23

Per Debtor communication they used the services through 9/30/23

Contract No.	Agreement	Order No.	Order Date	Term	Invoice No.	Invoice Date	Due Date	Service Period	Balance
02711714	MSA 2/3/21	Q-112692	2-Feb-21	5-Feb-21 to 4-Feb-24	25019929B	4-Feb-23	21-Mar-23	23-Apr-23 to 30-Sep-23	\$ 573,397.15